



# 33  
Election

PATENT

Attorney Docket No: 28967/35061A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Alitalo et al.

U.S. Serial No.: 09/427,657

Filed: October 26, 1999

For: Use of VEGF-C or VEGF-D  
Gene or Protein to Prevent  
Restenosis.

Group Art Unit: 1636

Examiner: S. Kaushal

) I hereby certify that this paper is being  
) deposited with the United States Postal  
) Service as first class mail, postage prepaid,  
) in an envelope addressed to Mail Stop  
) Commissioner for Patents, P.O. Box 1450,  
) Alexandria, VA 22313-1450 on June 17,  
) 2003.

David A. Gass

**RECEIVED**

JUN 23 2003

**ELECTION WITH TRAVERSE IN RESPONSE TO RESTRICTION REQUIREMENT**

TECH CENTER 1600/2900

Mail Stop  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313

Sir:

In a communication dated April 25, 2003, the Patent Office alleged that the claims pending in the above-identified application were directed to two distinct inventions and required restriction under 35 U.S.C. §121 and 372. This response is timely filed with a petition and fee for a one-month extension of time.

**I. Election**

The Applicants hereby elect Group I (claims 1-8, 10-18, 22-32, 49-74, and 75-100), "drawn to a method of treating a mammalian subject to inhibit restenosis of a blood vessel by administering to the subject a composition comprising (SEQ ID NO:1) that encodes a VEGF-C polypeptide (SEQ ID NO:2)." See Office Action of April 25, 2003 at p. 2.

**II. Traversal**

The MPEP indicates that two patentably distinct inventions should be restricted only if examination together would pose a serious burden on the examiner.

Quite the opposite situation exists here. The substantive examination of this application has proceeded for years and has included a substantial examination of the claims directed to both VEGF-C and VEGF-D. See, Office Actions of May 10, 2000, November 14, 2000, October 25, 2001, and June 5, 2002; Applicants' responses to each office action; and Interview Summary of July 16, 2002.

At this late stage in the prosecution, it would be inefficient to separate the examination into one directed to VEGF-C and another directed to VEGF-D, and there would be no serious burden to continuing to examine both groups of claims.


Enclosed is a declaration pursuant to 37 C.F.R. §1.132 in support of the claims directed to methods of treating restenosis with VEGF-D. The declaration evinces the usefulness of VEGF-D in the treatment of restenosis by demonstrating its ability to reduce the intimal thickening of an artery following balloon-denudation.

For the reasons set forth above, the applicants respectfully request reconsideration of the restriction requirement and allowance of all pending claims.

Respectfully submitted,

MARSHALL, GERSTEIN, & BORUN  
6300 Sears Tower  
233 South Wacker Drive  
Chicago, Illinois 60606-6402  
(312) 474-6300

By:



David A. Gass  
Reg. No. 38,153

June 17, 2003